

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
January 23, 2014

Meeting called to order at 6:06 p.m.

Board Members Present: Tom Emerson, Susan Tuveson, Karen Kalmar, Bob Melanson, Ann Grinnell, Mark Alesse, Deborah Driscoll Davis

Members absent: None

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

Ms. Grinnell moved to approve the minutes of January 9, 2014 as corrected

Ms. Kalmar seconded

Motion carried unanimously.

Ms. Grinnell moved to amend the agenda to move Item 4 to the first item discussion

Ms. Tuveson seconded

Ms. Grinnell stated she invited the Town Manager to discuss Item 4.

Motion carried unanimously.

Public Comment: No public comment.

ITEM 1 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code. Action: review amendment and schedule a public hearing Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

David Jones, Attorney representing Applicants, explained the Zoning amendment change application was submitted and reviewed by the MDEP, Planning Office and Town Attorney and they are requesting the Board schedule a public hearing.

Mr. DiMatteo explained the amendment must meet, at a minimum, MDEP standards. Mr. Jones then explained the specific request of the applicant, the impact of the proposed amendment, and noted his support of the amendment. Discussion followed regarding separating shoreland vs. non-shoreland references in the amendment.

Mr. Melanson moved to schedule a public hearing for Title 16.7.3.5.10, including the amended portions of paragraph e separating land inside and outside of the shoreland zone, as discussed

Ms. Grinnell seconded

Motion carried unanimously.

ITEM 2 – Town Code Amendment – Title 16.7 Sewer System and Septic Disposal and 16.9.1.4 Soil Suitability. Action: review amendment and schedule a public hearing. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development.

Ms. Kalmar stated she had a number of issues with the proposal and thought meeting to discuss and hash out as a smaller group would be a better resolution to drafting this amendment. A sub-committee will include Ms. Kalmar, Ms. Tuveson and Ms. Grinnell with Ms. Wells serving in advisory capacity. Earle Dean Wells asked questions on behalf of the Conservation Commission:

1. If, for well over the past ten years, the Comprehensive Plan has directed the growth in Kittery toward areas of town with town sewer and water, why would or why should the Planning Board be working

on revisions to Kittery Ordinance that could encourage development in those areas of Kittery requiring septic systems?

2. Since it appears that it is beyond the ability of the Code Enforcement to enforce Kittery Ordinances already in place, requiring regular maintenance and reporting of Kittery septic systems, why would the Planning Board encourage the huge master systems that would require more maintenance than the normal one house septic system?

Ms Driscoll's concerns with amendment language:

1. 'Sanitary sewer agency' should say Kittery Sewer Department (16.8.7.1.A);
2. Remove 'significant' (16.8.7.1.C)/(16.8.7.1.G);
3. Find better word for 'perennial' (16.8.7.1.F);
4. What does 'first-time residential use' (16.8.7.1.F.2) mean? Staff will check wording of state statute.
5. Add "filter and/or pre-tank" (16.8.7.14.G) language.

Mr. Melanson suggested referencing the appropriate licensing agencies, either the DEP or Plumbing Code. What would be done if a large system is down?

6. Replace 'proposed development' with 'property line' (16.8.7.3);
7. Replace 'and this Code' with consistent language (Code/Title 16/Ordinance?).

Ms. Tuveson moved to continue this item until such time as the subcommittee can report back to the Board.

Ms. Grinnell seconded

Motion carried unanimously.

ITEM 3 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and schedule a public hearing. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations.

Mr. Emerson stated he would like to see this item remain in concert with item 2 and requested a similar motion to continue review.

Ms. Grinnell moved that review of amendment to Title 16.7.8 Land Not Suitable for Development be continued.

Mr. Melanson seconded

Discussion followed regarding the proposed definition of Cemetery and Burying Ground. Additional language to consider including: 'starting with a 10-foot distance from existing tombstones and expanding as necessary to form a final rectilinear area'.

Motion carried unanimously

ITEM 4 – Board Member Items / Discussion

A. Review Bylaw changes - Board Comments:

- Section 1, Board: Retain "Members shall be residents of the Town for at least one (1) year prior to their appointment."
- Section 2, Officers: Accept changes.
- Section 3, Meetings: Add a cancellation clause. Ms. Tuveson will check for a citation for cancellation.
- Section 4, Special Meetings: Include 'email with receipt acknowledgement', in addition to phone contact.

Bob Melanson stated the Port Authority Rules and Regulations (by Statute) require a Planning Board member be appointed to the Port Authority. This should be included in the Planning Board Bylaws. Ms. Tuveson will draft language for this.

- Section 5, Format: Move Board and Planner time before new business; move 'call the roll' before 'pledge'.
- Section 6, Minutes: Accept changes.
- Section 7, Quorum: Procedural matters shall be a simple majority in all cases.
- Section 8, Conflict of interest: remove language "under the influence of a conflict of interest". Members discussed the perception and instances of conflict of interest and bias.
- Section 9, Attendance: Include language 'without notice' (where a member is absent 'without notice...').
- Section 10, Site Walks: Further discussion is needed. Change: "Minutes of site walks shall be the responsibility of the Planner or Planner's designee, and after Board approval shall be included in the applicant's record."
- Section 11, Chair: Accept changes.
- Section 12, Votes: Accept changes.
- Section 13, Debate: Accept changes.
- Section 14, Adjourn: Accept changes.
- Section 15, Reconsideration: Accept changes.
- Section 16, Public Meeting: Accept changes.
- Section 17, Executive Session: Accept changes.
- Section 18, Bylaws: Accept changes.
- Section 19, Roberts Rules: Accept changes.

Ms. Tuveson will revise the Bylaws to include strikeouts and underlines for final Board review, excluding revisions by Mr. Dennett.

B. Discuss legal issues associated with Waivers - Will be discussed at 1/24/14 meeting.

C. Punch List Item 'Non-Conforming Structure Replacement outside the Shoreland Zone' - Will be discussed at 1/24/14 meeting.

D. Other

Ann Grinnell:

- If the Board has their meeting on 1/24/14, asked that the agenda be changed, as it was clear in the minutes of 1/9/14 there would be Board members only, no staff present. Ms. Tuveson concurred, noting her planned work had been dropped from the agenda. Discussion followed regarding what the Board will discuss on 1/24.

Ms. Grinnell moved to discuss the bylaws at the workshop on 1/24

Ms. Tuveson seconded

Ms. Driscoll thought the bylaws could be reviewed and finished tonight. Mr. Alesse and Mr. Melanson concurred.

Motion failed with 1 in favor (Grinnell); 6 against; 0 abstentions.

Discussion followed regarding the development of Board agendas, the intent of the advertised 1/24 Board meeting, and what would be discussed

Ms. Kalmar moved to follow the printed agenda and see what happens

Mr. Melanson seconded

Motion carried; 6 in favor; 1 opposed (Grinnell); 0 abstentions

- Foreside Listening Session: Why wasn't the session done by the Planning Board? Mr. Emerson explained the Board needs to be careful with economic development initiatives that the Council can initiate.

Nancy Colbert Puff, Town Manager, stated the Council is interested in listening to all involved parties concerned about the Foreside, and would seek the input of the Board and individual members as discussion progresses. The common goal should be the same.

Ms. Tuveson noted she felt there is a conflict with the Planner also involved in economic development, and the staff developing the agenda. Ms. Grinnell noted the Shore and Harbor Grant did not include the Planning Board's participation. Mr. Melanson explained the Grant was initiated by the former Commissioner of Public Works. Discussion followed regarding the involvement of staff and Board members in the Shore and Harbor Grant development and in Foreside planning.

Ms. Grinnell asked about the Route 1 By-Pass meeting, and noted the Council should be involved. Mr. Emerson explained the closing of the bridge will not be as impactful as the Memorial Bridge, so discussions have begun regarding improvements to the area. Ms. Driscoll suggested the business owners can take an active interest in the area while working with the state. Discussion followed regarding planning and economic development responsibilities handled by one person. Mr. Mylroie explained his work and efforts in both areas. Ms. Puff explained the Council has charged her with promoting better communications and involvement within the town.

Tom Emerson:

- He sent email to members regarding a meeting on Sea Level Rise in Kittery.

Gerry Mylroie:

- By-pass property owners will be meeting on Wednesday, January 29 at 8:00 p.m. in Council Chambers, and will be looking to re-brand the area. Ms. Driscoll stated residents need to be able to weigh in on naming areas of town, not just business owners.

Mr. Melanson moved this type of issue should be an agenda item, and not just a planner time item, providing specificity, to allow for Board participation.

Ms. Tuveson seconded

Mr. Emerson re-framed the motion: Any Destination Marketing program be included as an agenda item.

Motion carried unanimously

ITEM 5 – Town Planner Items:

A. Town Code Amendments- Quality Improvement Overlay Zone; Outdoor Seating; and others - To be discussed at a future date; punchlist.

B. Town Comprehensive Plan Update Status -

Ms. Driscoll: Plan is in final edit process with strikethroughs and underlines.

C. Other Town Comprehensive Plan Implementation Activities - To be discussed at a future date.

D. Other

Mr. Mylroie asked about staff participation at the 1/24/14 Board meeting. Mr. Emerson said it seemed clear from Board members that this meeting will be for the Board only.

Mr. Melanson moved to adjourn

Ms. Grinnell seconded

Motion carried by all members present

The Kittery Planning Board meeting of January 23, 2014 adjourned at 9:35 p.m.
Submitted by Jan Fisk, Recorder, February 5, 2014